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11 *Attorneys for GitHub, Inc. and Microsoft Corporation*

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

16 J. DOE 1, et al.,
17 Individual and
Representative Plaintiffs,
18 v.
19 GITHUB, INC., et al.,
20 Defendants.

Case No. 4:22-cv-06823-JST
Consolidated with Case No. 4:22-cv-07074-JST

**DECLARATION OF ANNETTE L.
HURST IN SUPPORT OF DEFENDANTS
GITHUB AND MICROSOFT'S
OPPOSITION TO PLAINTIFFS'
MOTION TO MAINTAIN
CONFIDENTIALITY DESIGNATIONS
FOR PLAINTIFFS' TRUE NAMES**

Date: May 4, 2023
Time: 2:00 p.m.
Courtroom: 6, 2d Floor
Judge: Hon. Jon S. Tigar

Complaint Filed: December 7, 2022

25 AND CONSOLIDATED ACTION
26

1 I, Annette L. Hurst, hereby declare:

2 1. I am an attorney at the law firm of Orrick, Herrington & Sutcliffe LLP, counsel of
 3 record for Defendants GitHub, Inc. and Microsoft Corporation in this action. I am a member of
 4 the California State Bar and am admitted to practice before this Court. I have personal
 5 knowledge of the facts stated in this declaration unless otherwise stated, and if called to testify to
 6 those facts, I could and would competently do so.

7 2. Attached as **Exhibit 1** is a true and correct copy of a letter from Joseph Saveri to
 8 Annette Hurst, dated March 8, 2023, providing Plaintiffs' true names and designating them as
 9 **HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY**. Despite months of meet and confer
 10 on the issue, including numerous emails, letters, and at least two video conferences among
 11 counsel, this was the first time that Plaintiffs' counsel disclosed Plaintiffs' true names to
 12 Defendants.

13 3. Attached as **Exhibit 2** is a true and correct copy of a letter from Annette Hurst to
 14 Joseph Saveri, dated March 9, 2023, objecting to the AEO designation. I sent this letter by e-mail
 15 at approximately 11:37 a.m. on that day. Later that day, Plaintiffs served their Oppositions to
 16 Defendants' Motions to Dismiss, for the first time disclosing to Defendants the nasty emails that
 17 are the basis for their position that Plaintiffs' names should be kept confidential.

18 4. On Monday, March 27, 2023, I met by video conference with Joseph Saveri and
 19 Travis Manfredi, counsel for Plaintiffs, and Joseph Gratz, counsel for OpenAI, to discuss the
 20 issue of the AEO designation of Plaintiffs' true names. During the discussion, I asked whether
 21 Plaintiffs' counsel had any authority for the proposition that Rule 23 permitted Plaintiffs' names
 22 to be withheld from the public. I also asked whether Plaintiffs had any evidence they intended to
 23 rely upon with respect to the AEO designation of Plaintiffs' names other than the three emails
 24 they had supplied in connection with the Oppositions to the Motions to Dismiss. During the
 25 conference, Plaintiffs' counsel did not provide any cases or other communications that they
 26 intended to rely upon. At the end of the discussion, the parties agreed that any motion practice
 27 regarding the AEO designation of Plaintiffs' names should be set for hearing at the same time as
 28 motions to dismiss, since they involved a related issue.

1 5. On Wednesday, March 29, 2023, I followed up with Plaintiffs' counsel by e-mail,
 2 asking "were there any other communications Plaintiffs would like us to consider, or Rule 23
 3 precedents, in connection with this issue?" Mr. Saveri responded by email asking me to explain
 4 what would convince us to his point of view, and indicating that in the absence of a response from
 5 me "we have made our point and you don't agree." No further information was provided.

6 6. Subsequent to the dates of the emails provided in connection with the Motion, Mr.
 7 Butterick has continued to make public statements about this lawsuit. On November 4, Messrs.
 8 Butterick and Saveri issued a press release about the lawsuit. Mr. Butterick was quoted in a
 9 February 10, 2023 piece about AI in the *New Yorker*. He was quoted in a February 24, 2023
 10 article published by Axios about generative AI. Episode #347 of the *Lawyerist* podcast aired on
 11 March 30, 2023 featuring a lengthy interview with Mr. Butterick that included a number of
 12 statements about this case. Mr. Butterick also continues to publish his websites.

13 7. The designation of Plaintiffs' names as AEO impairs our ability to conduct a full
 14 investigation of Plaintiffs' claims and to conduct discovery regarding Plaintiffs. The AEO
 15 designation limits the personnel at the Defendants to whom the names can be disclosed to only
 16 supervising counsel. We also need to enlist the assistance of technical personnel to fully
 17 investigate the claims, and we cannot obtain the necessary assistance from those technical
 18 personnel without disclosing Plaintiffs' names to them. That disclosure is prohibited by the AEO
 19 designation. For months we were unable to fully investigate Plaintiffs' claims, indeed we could
 20 not even perform a complete conflicts check, because we did not have Plaintiffs' names at all.
 21 Then, when we finally got the names, we still could not conduct a complete investigation because
 22 we could not disclose the names to technical personnel.

23 8. In addition, if any claims eventually survive the motions to dismiss and discovery
 24 commences, we intend to investigate Plaintiffs' claims using third-party subpoenas. For example,
 25 we intend to gather information from third parties about whether Plaintiffs authored and/or own
 26 any code they deposited in public GitHub repositories that they assert is the basis for their claims.
 27 In order to gather such information about Plaintiffs' code using third-party subpoenas, we need to
 28 be able to disclose their names in the subpoenas. Yet doing so is prohibited by the AEO

1 designation. There are undoubtedly other subjects relevant to Plaintiffs' status as putative class
2 representatives that we would typically investigate using third-party subpoenas, and such an
3 investigation is also foreclosed by the AEO designation.

4 I declare under penalty of perjury under the laws of the United States that the foregoing is
5 true and correct. Executed on this 13th day of April, 2023 in San Francisco, California.
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8 By: _____ */s/ Annette L. Hurst*
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